UN

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/AC.26/1995/3
17 May 1995

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE THIRD INSTALMENT OF CLAIMS FOR DEPARTURE FROM IRAQ OR KUWAIT (CATEGORY "A" CLAIMS)

GE.95-61425

CONTENTS

	Paragraph	Page
INTRODUCTION	1-2	3
I. CATEGORY "A" CLAIMS IN GENERAL	3	3
II. EVIDENTIARY STANDARD APPLICABLE TO CATEGORY "A" CLAIMS	4	4
III. METHODOLOGY FOR PROCESSING CATEGORY "A" CLAIMS		4
A. Several methods	5-6	4
B. The third instalment of category "A" claims	7-9	5
IV. THE PROCESSING OF THE THIRD INSTALMENT OF CLAIMS		5
A. Processing by the secretariat	10	5
B. Validation	11-12	6
C. Other issues		6
1. Departure date outside the jurisdictional period	13	6
2. Limitations on claiming in more than one category	14-15	6
3. Interest	16	7
D. Computerized verification of category "A" claims in the third instalment		8
1. Departure from Kuwait and Iraq during the Gulf crisis	17	8
2. The computerized matching	18	8
3. The Arrival/Departure Records	19	8
4. Evidentiary value of the various records	20-21	8
V. RECOMMENDED COMPENSATION FOR THE THIRD INSTALMENT OF CATEGORY "A" CLAIMS	22-25	9
Notes		10
Annex Category "A" claims recommended for payment in the third instalment (Summary Table)		11

INTRODUCTION

1. This third report contains the recommendations to the Governing Council of the Panel of Commissioners (the "Panel") appointed to review claims for departure from Iraq or Kuwait ("category 'A' claims") concerning the third instalment of claims,[1] pursuant to article 37 (e) of the Provisional Rules for Claims Procedure (the "Rules").[2] Category "A" claims are among the "most urgent claims" for which the Governing Council Decision on "Criteria for Expedited Processing of Urgent Claims"[3] has set forth "simple and expedited procedures" in order to provide "prompt compensation in full" or "substantial interim relief". This report makes compensation recommendations for the category "A" claims reviewed in the third instalment of claims submitted to the Panel by the Executive Secretary of the United Nations Compensation Commission (the "Commission"). In considering these claims, the Panel has, in accordance with article 31 of the Rules, applied Security Council resolution 687 (1991), the criteria established by the Governing Council for this category of claims and other pertinent decisions of the Governing Council.

2. As described in the first report, the Panel held three preparatory meetings with the secretariat of the Commission to discuss the methodology and procedures used by the secretariat in the processing of the first instalment of category "A" claims. The same methodology and procedures have been applied to the second and third instalments of claims. The Panel held one substantive session to review claims in the third instalment from 14 to 16 March 1995.

I. CATEGORY "A" CLAIMS IN GENERAL

3. Category "A" claims are claims for departure from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991. For a more detailed description of the nature of category "A" claims, the Claim Form "A" and the amounts that can be claimed under this category, reference is made to Part I of the first report.

II. EVIDENTIARY STANDARD APPLICABLE TO CATEGORY "A" CLAIMS

4. The evidentiary standard applicable to category "A" claims is stated in Decision 1 and more specifically in article 35 (a) of the Rules. As is explained more fully in paragraphs 17-21, all of the claims in the third instalment were verified to meet this standard by way of computerized matching of the claims in question against an Arrival/Departure Database that was developed from documentary evidence such as Arrival/Departure Records made available by various governments and international organizations. The Panel therefore was not required to review evidence attached to those claim forms.

III. METHODOLOGY FOR PROCESSING CATEGORY "A" CLAIMS

A. Several methods

5. Part III.A. of the first report sets out the different methods envisaged by the Rules for the verification of category "A" claims, i.e., matching, sampling and additional verification "as circumstances warrant". The computerized matching of the claims against the Arrival/Departure Database has been the methodology relied upon for the verification of claims in the third instalment.

6. A first matching run was performed for all claims that were filed with the Commission before 1 July 1993. A second matching run was subsequently performed for all claims the verification of which had not been attempted in the context of the first instalment, i.e., claims filed later than 1 July 1993. (For the number of claims and the country-wise composition comprising the first instalment, see Part III.B. of the first report). Also included in the second matching run were claims that were filed prior to 1 July 1993 but which were affected by technical deficiencies preventing them from being considered for the first instalment, provided that such deficiencies had been remedied in time to permit inclusion in the second matching run. Claims included in the second matching run were verified against two additional sets of Arrival/Departure Records that had not been

used in the first run because of technical problems, i.e., those provided by the Governments of Iran and Jordan.

B. The third instalment of category "A" claims

7. In determining the total number of claims and the country-wise composition comprising the third instalment of category "A" claims the Panel applied the general guidelines set forth by the Governing Council for the composition of the several instalments of category "A" claims taking into account various considerations such as the total number of claims submitted by different countries, the dates of their submission, the estimate of time it would take to process claims even through expedited procedures, and the estimate of the funds that might be available. The Panel's recommendations as set out in paragraphs 22-25, for the payment of claims listed in the Summary Table attached to this report, are made according to such criteria and procedures, as elaborated below.

8. The Panel reviewed and recommends for payment in the third instalment all of the claims that had been successfully verified in the second matching run and had not been included in the second instalment.

9. The number of claims per submitting country that the Panel recommends for payment in the context of this instalment is listed in the column "Number of Claims Recommended for Payment" of the Summary Table attached to this report.

IV. THE PROCESSING OF THE THIRD INSTALMENT OF CLAIMS

A. Processing by the secretariat

10. All of the claims contained in the third instalment were subjected to the processes described in Part IV.A. of the first report.

B. Validation

11. As was the case for the claims contained in the first and second instalments, before matching the claims in the third instalment against the Arrival/Departure Database, the claims were passed through a preliminary computerized screening process hereinafter referred to as "validation". The purpose of validation is threefold. First, some aspects of the format of the claims are checked. Second, the Iraqi claimants are separated from the non-Iraqi claimants. Third, the validation programme checks whether there are any duplicate claims in the "A" claims category.

12. As explained more fully in Part IV.B.3. of the first report, the Panel instructed the secretariat to analyze further the claims that have been identified and separated as "possible duplicates" to confirm whether such claims are indeed duplicates. The secretariat is in the process of examining those claims. In view of the considerations outlined in this Part of the first report, the Panel recommends that governments keep an accurate record of the persons to whom amounts awarded are paid in order to minimize the risk of multiple recovery on the basis of a duplicate "A" claim.

C. Other issues

1. Departure date outside the jurisdictional period

13. As in the first and second instalments, claimants in the third instalment who stated in their claim form a "date of departure" outside the period from 2 August 1990 to 2 March 1991, were deemed by the Panel to have misinterpreted the meaning of the term "date of departure" and, therefore, were not dismissed on the basis of such a date if the claimants in question nevertheless matched against an Arrival/Departure Record establishing departure within the jurisdictional period.

2. Limitations on claiming in more than one category

14. The Governing Council's decision on "Multi-Category Claims"[4]/ establishes that claimants who have selected a higher amount under category "A" (US$4,000 or US$8,000) and have also

filed a claim in category "B", "C" or "D", will be deemed to have selected the corresponding lower amount under category "A". With regard to this decision, the Panel in its second report (see Part IV.C.2.) had drawn the attention of the Governing Council to the prejudice caused by that decision to the claimants who had submitted category "A" claims and had abided by the rules which required them to agree not to file claims in another category. The Panel had expressed the view that the Governing Council may wish to review this matter, and had indicated the lines along which a fair solution could be achieved by an appropriate decision of the Governing Council which would maintain "a just balance between such claimants and those who will benefit from the application of Decision 21".

15. The Panel notes that at its sixteenth session, when approving the second report, the Governing Council, inter alia, stressed that it shared the Commissioners' concern that no claimant who properly followed the Commission's procedures in submitting a category "A" claim should be prejudiced as a result of the application of Decision 21. The Governing Council decided to keep under advisement, and at an appropriate time consider, whether the Commission's procedures for making payments to successful claimants should be implemented as proposed by the Commissioners, i.e., that all successful claimants who had submitted category "A" claims for higher amounts but had not submitted claims in any other category, receive full payment of those amounts, pursuant to the terms of Decision 17, before any additional amounts beyond the initial US$2,500 are paid to the category "A" claimants who submitted claims for such higher amounts but had also filed claims in other categories. In considering this matter, the Governing Council would take into account the views of the secretariat regarding this proposal's feasibility and implications.

3. Interest

16. On the basis of the considerations formulated in Part IV.C.3. of the first report, the Panel reiterates its recommendation that interest should be paid on the awarded amounts in category "A" claims in accordance with the Governing Council Decision on "Awards of Interest"._/ With respect to

category "A" claims, the phrase "the date the loss occurred" in Decision 16 should be interpreted to be 2 August 1990.

D. Computerized verification of category "A" claims in the third instalment

1. Departure from Kuwait and Iraq during the Gulf crisis

17. With regard to the background information on the number of departees and the circumstances of their departure, reference is made to Part IV.D.1. of the first report.

2. The computerized matching

18. The third instalment of claims was subjected to the same computerized matching process that had been used for the verification of the first and second instalments of category "A" claims. The goal of this computerized verification process was to determine whether a given claimant appears in one or more of the records that constitute the Arrival/Departure Database and which the Panel found to establish departure from Kuwait or Iraq during the relevant jurisdictional period. In order to achieve this goal, the secretariat used the same specially designed software as in the first instalment. The general characteristics of this computerized process and the software supporting it were reviewed by and met the approval of the Panel; they are described in detail in Part IV.D.4. of the first report.

3. The Arrival/Departure Records

19. The Arrival/Departure Records used by the secretariat for the computerized verification of claims in the third instalment include all those utilized for the verification of claims in the first and second instalments and referred to in Part IV.D.2. of the first report and Part IV.D.3. of the second report.

4. Evidentiary value of the various records

20. The evidentiary value of the Arrival/Departure Records provided by a number of governments and international organizations was determined by the Panel in Part IV.D.3. of the first report and Part IV.D.4. of the second report.

21. The Panel, thus, determined that a claimant who had matched against one or more of these records met the applicable evidentiary requirements and was entitled to compensation.

V. RECOMMENDED COMPENSATION FOR THE THIRD INSTALMENT OF CATEGORY "A" CLAIMS

22. Pursuant to article 37 (e) of the Rules, the Panel hereby presents its final recommendations on the claims comprising the third instalment of category "A" claims.

23. Having considered the results of the verification of claims accomplished through computerized matching and further having considered all relevant circumstances and materials available with the Commission, the Panel recommends for payment of compensation 132,080 claims submitted by 16 countries. The total recommended amount of compensation for the third instalment comes to US$517,650,500.

24. The Panel records that claims that could not be included in the third instalment due to such factors as defective format or possible duplication are expected to receive consideration when subsequent instalments are processed.

25. The attached Summary Table lists on a country-by-country basis the number of claims for which payment is recommended and the total recommended amount of compensation. A table containing the breakdown of the amounts to be paid to each individual claimant will be provided to each respective country.

Geneva, 23 March 1995

(Signed) Kamal Hossain
Chairman

(Signed) Matti Pellonpää
Commissioner

(Signed) Rafael Rivas-Posada
Commissioner

Notes

[1]/ The recommendations concerning the first instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)", (S/AC.26/1994/2), (hereinafter referred to as the "first report"). General information regarding the establishment of the United Nations Compensation Commission in the aftermath of the Gulf crisis as well as the composition of the Panel are contained in the introduction to the first report. The recommendations concerning the second instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)", (S/AC.26/1995/2), (hereinafter referred to as the "second report").

[2]/ S/AC.26/1992/10, article 37 (e) requires that "[e]ach Panel will report in writing through the Executive Secretary to the Governing Council on the claims received and the amount recommended to be allocated to each Government or other entity for each consolidated claim. Each report will briefly explain the reasons for the recommendations and, to the extent practicable within the time-limit, contain a breakdown of the recommendations in respect of individual claims within each consolidated claim".

[3]/ S/AC.26/1991/1, (hereinafter referred to as "Decision 1").

[4]/ S/AC.26/Dec.21 (1994), (hereinafter referred to as "Decision 21").

[5]/ S/AC.26/1992/16, (hereinafter referred to as "Decision 16").

Annex

Category "A" Claims Recommended for Payment in the Third Instalment (Summary Table)

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US$)
Australia	7	$35,000.00
Bahrain	1	$2,500.00
Egypt	63,064	$174,295,500.00
Federal Republic of Yugoslavia (Serbia and Montenegro)	245	$1,016,000.00
India	4,083	$16,173,500.00
Iran	9,175	$68,089,000.00
Jordan	19,670	$93,155,000.00
Korea, Republic of	8	$20,000.00
Kuwait	20,739	$104,650,500.00
Pakistan	43	$180,500.00
Philippines	1,542	$6,039,500.00
Russian Federation	19	$112,000.00
Sri Lanka	13,250	$52,929,500.00
Sudan	11	$43,500.00
United States of America	38	$168,500.00
Vietnam	185	$740,000.00
Total	132,080	$517,650,500.00